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No. \_\_\_\_\_

Supreme Court, U.S.

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JOSEPH F. SPANICK, JR.

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1987

\_\_\_\_\_  
JOSEPH H. SOX,

*Petitioner*

v.

UNITED STATES OF AMERICA,

*Respondent*

\_\_\_\_\_  
**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

\_\_\_\_\_  
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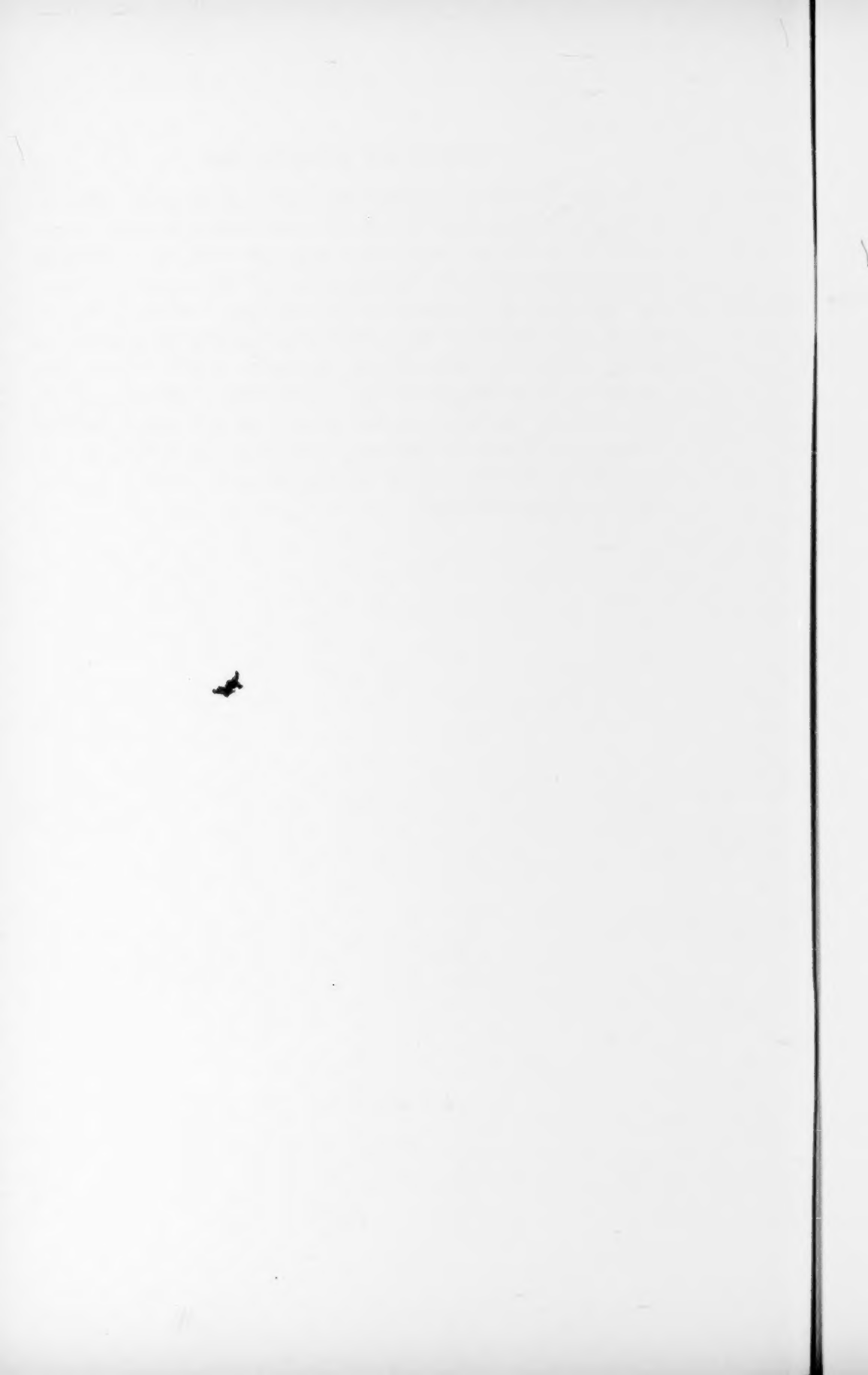
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*Attorneys for the Petitioner*



### QUESTION PRESENTED

Is the evidence secured by law enforcement officials during a warrantless entry of a defendant's rural home and its curtilage admissible against him in a federal criminal prosecution, on grounds that the entry was lawful because of "exigent circumstances," when the evidence was obtained upon entry to remove or neutralize booby traps on defendant's property which were perceived to be a danger to the public when the officers admit that no probable cause existed at the time for the issuance of a search warrant, and when the premises was secured so that no threat of danger existed until a warrant could be obtained?



## TABLE OF CONTENTS

	Page
QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iv
OPINION BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE .....	2
REASONS FOR GRANTING THE WRIT .....	7
CONCLUSION .....	12

## TABLE OF AUTHORITIES

CASES	Page
<i>Cady v. Dombrowski</i> , 413 U.S. 433, 37 L.Ed.2d 706, 93 S.Ct. 2523 (1973) .....	8, 9, 10
<i>Katz v. U.S.</i> , 389 U.S. 347, 19 L.Ed.2d 576, 88 S.Ct. 507 (1967) .....	8
<i>Michigan v. Tyler</i> , 436 U.S. 499, 56 L.Ed.2d 486, 98 S.Ct. 1942 (1978) .....	8, 9, 10
<i>Mincey v. Arizona</i> , 437 U.S. 385, 57 L.Ed.2d 290, 98 S.Ct. 2408 (1978) .....	8
<i>Payton v. New York</i> , 445 U.S. 573, 63 L.Ed.2d 639, 100 S.Ct. 1371 (1980) .....	8
<i>United States v. Houle</i> , 603 F.2d 1297 (8th Cir. 1979) .....	12
<i>United States v. Jeffers</i> , 342 U.S. 48, 96 L.Ed. 59, 72 S.Ct. 93 (1951) .....	8
<i>United States v. Martin</i> , 781 F.2d 671 (9th Cir. 1985) .....	10
<i>United States v. Martin</i> , 562 F.2d 673 (D.C. Cir. 1977) .....	11, 12
<i>United States v. Mayes</i> , 670 F.2d 126 (9th Cir. 1982) .....	10
<i>United States v. Pacheco-Ruiz</i> , 549 F.2d 1204 (9th Cir. 1976) .....	12
<i>United States v. United States District Court</i> , 407 U.S. 297, 32 L.Ed.2d 752, 92 S.Ct. 2125 (1972) .....	7, 8
<i>Welsh v. Wisconsin</i> , 466 U.S. 740, 80 L.Ed.2d 732, 104 S.Ct. 2091 (1984) .....	7

## OTHER AUTHORITIES

United States Constitution, Amendment IV .....	2, 7, 8
18 U.S.C. § 3231 .....	2
26 U.S.C. § 5861 (f) .....	3
26 U.S.C. § 5861 (i) .....	2
28 U.S.C. § 1254 (1) .....	2
28 U.S.C. § 1291 .....	2
Rules of the Supreme Court of the United States:	
Rule 17.1 (a) (c) .....	2, 7, 12
Federal Rules of Criminal Procedure:	
Rule 11 (a) (2) .....	6

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1987

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No. \_\_\_\_\_  
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JOSEPH H. SOX,

*Petitioner*

v.

UNITED STATES OF AMERICA,

*Respondent*

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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**  
\_\_\_\_\_

*To the Honorable, the Chief Justice and Associate Jus-  
tices of the Supreme Court of the United States:*

Joseph H. Sox, the petitioner herein, prays that a Writ of Certiorari issue to review the order of the United States Court of Appeals for the Eleventh Circuit entered in the above-styled case on December 9, 1987, and the denial of petition for rehearing and rehearing in banc entered on February 24, 1988.

**OPINION BELOW**

The order of the United States District Court for the Middle District of Alabama denying the Defendant's motion to suppress is printed in Appendix hereto, *infra*. (A-1). An order of the district court amending the final judgment of guilt upon a conditional plea of guilty

is printed at Appendix A-7. The judgment, without opinion, of the United States Court of Appeals for the Eleventh Circuit is printed at Appendix A-8. The order of the Eleventh Circuit denying the petition for rehearing in banc is printed at Appendix A-9.

### **JURISDICTION**

The judgment of the United States Court of Appeals for the Eleventh Circuit (App. A-8) was entered on December 9, 1987. The order denying the petition for rehearing and suggestion for rehearing in banc was entered on February 24, 1988. (App. A-9). The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1), as enlarged upon in Rule 17.1(a)(c), Rules of the Supreme Court of the United States. Jurisdiction in the original court was posited under 18 U.S.C. § 3231 and jurisdiction of the appeal under 28 U.S.C. § 1291.

### **CONSTITUTIONAL PROVISIONS INVOLVED**

Constitution of the United States, Amendment IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

### **STATEMENT OF THE CASE**

On March 11, 1987, an indictment was returned against Joe Howle Sox<sup>1</sup> containing fifteen (15) counts. All counts charged Sox with the possession of unregistered firearms ("pipeguns") in violation of 26 U.S.C. § 5861 (i), except that five (5) counts (VI through X) charged

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<sup>1</sup> The Defendant's name has been misspelled throughout these proceedings. His true name is Joe Howle Sox, *not* Joseph H. Sox.

that Sox "did make" firearms in violation of 26 U.S.C. § 5861(f).

At his arraignment on March 24, 1987, the Defendant pleaded not guilty to the charges in the indictment. The Defendant then filed a motion to suppress all evidence seized or secured by reason of a search of Sox's residential premises, and the motion was heard on May 15, 1987. The trial court denied Sox's motion to suppress by order entered on June 9, 1987. (App. A-1).

The trial court found certain facts which will be repeated verbatim from the trial court's order of June 9, 1987, denying the motion to suppress. Through the mechanism of footnotes, however, this petition will highlight certain comments upon findings which are contended not to have been supported by the evidence, and relevant additions thereto which were established by the evidence. Where indicated, references to the record below will be referred to as "R- - ."

On the evening of November 29, 1986, Sox was seriously injured by a gunshot wound to the chest and was taken by his friend, Hugo Zacchini, to a local hospital. Anticipating that the local police officials would search his property for an armed assailant, Sox urged Zacchini to inform the police not to go onto his property because his home,<sup>2</sup> garage and surrounding property were "booby-trapped." After a series of break-ins at his property, Sox had installed a number of homemade weapons rigged to fire automatically when triggered. He feared that one of the investigating officers might inadvertently trigger a booby trap.

In response to a radio dispatcher's broadcast of a shooting at Sox's home, various officers of the Covington County Sheriff's Department and the City of Andalusia

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<sup>2</sup> Dr. Sox's home, the subject of the search, was in a rural area, about "eight or nine miles" out in the country. (R-2-111).

Police Department arrived at the scene of the shooting in the hour following Sox's injury. Based on what Zacchini had said to the police, the first two officers to arrive at the scene were under the impression that only Sox's home was booby trapped; they therefore proceeded to search only the grounds around the residence for an armed assailant. While conducting the search, one of the officers became entangled in fishing wires which Sox had placed across one area of his property. The officer believed that he had stumbled across a booby trap and retreated to await the arrival of other officers.

Chief Deputy Shaw, the officer in command on the evening of November 29, and Zacchini arrived on the scene shortly after the first two officers. The officers informed Shaw about the fishing wires in the yard which they suspected were attached to a booby trap. Zacchini again warned the officers that Sox's home, garage and surrounding property were rigged with booby traps. Shaw decided to conduct his own cursory investigation. As he approached Sox's garage, he saw fishing wires that were apparently connected to something inside the garage. On one of the outside walls of the garage, Shaw detected what he believed to be a booby trap aimed through a drilled opening.

Based upon his own investigation and the information provided by Zacchini and the two officers first arriving at the Sox residence, Chief Deputy Shaw determined that an emergency situation existed and that the booby traps on Sox's property had to be found and deactivated immediately. From his observations, Shaw thought there was a substantial possibility that Sox might have been injured by one of his own traps.<sup>3</sup> Shaw was concerned that anyone innocently on the property might be injured or killed.

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<sup>3</sup> Interestingly, one or two of the deputies had prior knowledge for some time that Dr. Sox had booby traps on his property. R-2-29, 103.

And, given that a number of burglaries had occurred at the Sox residence, he was also concerned that some individual unlawfully on the Sox property might be injured or killed if the booby traps were not deactivated. Moreover, in light of Sox's injury, Shaw was concerned that the traps might fire without even being triggered.<sup>4</sup>

Shaw dispatched an officer to the hospital to obtain information from Sox about the location of the booby traps.<sup>5</sup> Shaw then entered Sox's closed garage with the intent of deactivating the booby traps that he had concluded were inside of the garage.<sup>6</sup> Once inside, Shaw discovered that there were more booby traps than he had initially suspected; the booby traps were complicated and varied in construction, and one booby trap had recently discharged. Shaw concluded that the expert assistance of the Explosive Ordinance Disposal Unit ("EOD") from a nearby military base would be required to deactivate all of the booby traps on the Sox property. Shaw also

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<sup>4</sup> Whether Shaw was concerned that the traps might fire without being triggered is questionable. He testified that someone going on the property might be injured by triggering the traps. Shaw would not confirm that he had any fear that the traps would be triggered by something "at any moment." Shaw did once say that he wanted to determine the location of the traps "so we could disarm them so they wouldn't accidentally discharge or anything like that." (R-2-107). It is submitted, however, that the witness was only expressing fear that, during the disarming process, the traps might be "accidentally" triggered, and that he was not asserting any fear that the devices would fire without being triggered. (R-2-108).

<sup>5</sup> Sox, although severely injured and sedated, drew a diagram of the locations of the booby traps. The government did not contend that Dr. Sox ever consented to or authorized a search. (R-2-67).

<sup>6</sup> Upon entry into the garage, and upon the subsequent entry into the home, Chief Deputy Shaw admitted that the area was secured to prevent the entry of persons who might be accidentally injured. (R-2-112).

radioed for a paramedic team in case an accident did occur.

EOD conducted a thorough search of Sox's home, garage and surrounding property for the purpose of deactivating all of Sox's booby traps. Immediately after EOD deactivated the booby traps, the county police officers photographed and seized the booby traps from Sox's property.

After the denial of the motion to suppress, Sox then filed a motion for approval of the entry of a conditional plea of guilty pursuant to Rule 11(a)(2), Federal Rules of Criminal Procedure, reserving the right, on appeal from the judgment, to seek review of the trial court's order denying Sox's motion to suppress evidence, which motion was granted by the trial court on June 10, 1987. Sox then changed his plea from not guilty to guilty as to Count III of the indictment, and the remaining counts were dismissed upon the oral motion of the United States Attorney.

Sox was adjudged guilty as to Count III of the indictment on July 10, 1987, which judgment was amended on July 14, 1987, to reflect that Sox's plea of guilty was a conditional plea entered pursuant to Rule 11(a)(2), Federal Rules of Criminal Procedure, reserving the right, on appeal from the judgment, to seek review of the trial court's order denying Sox's motion to suppress (App. A-7).

Sox filed his timely notice of appeal on July 16, 1987. The United States Court of Appeals for the Eleventh Circuit affirmed the trial court's judgment without written opinion on December 9, 1987. A petition for rehearing and suggestion of in banc consideration was denied on February 24, 1988, precipitating this Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.

## REASONS FOR GRANTING THE WRIT

Dr. Sox asserts that the United States violated his FOURTH AMENDMENT rights to be secure in his home by conducting a warrantless search and seizure where there was no probable cause for a warrant<sup>7</sup> and the premises was secured. This case addresses the question of the extent to which "exigent circumstances" justify a warrantless search when the alleged exigent circumstances are caused by objects or substances in a dwelling that the police feel may endanger persons going inside. Here, the government contends that the police may enter a person's private home because of alleged dangerous objects inside. Sox contends that to allow evidence from such searches extends the exigent circumstances exception for a warrantless search beyond the existing parameters set by Supreme Court cases as well as the decisions of the various circuit courts of appeals. These circumstances make this case appropriate for certiorari under Rule 17.1(a) and (c).

This Honorable Court has recognized that "... [a] principle protection against unnecessary intrusions into private dwellings is the warrant requirement imposed by the Fourth Amendment on agents of the government who seek to enter the home for the purposes of search or arrest." *Welsh v. Wisconsin*, 466 U.S. 740, 748, 80 L.Ed 2d 732, 742, 104 S.Ct. 2091 (1984). The Court observed in *Welsh* that "[i]t is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *Welsh v. Wisconsin*, *supra*, 466 U.S. at 748, 80 L.Ed 2d at 742 (quoting from *United States v. United States District Court*, 407 U.S. 297, 313, 32 L.Ed 2d 752, 764, 92 S.Ct. 2125

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<sup>7</sup> The government clearly conceded, and the trial court found, that the officers in this case "lacked probable cause to obtain a warrant," and thus that "a warrantless entry based on such exigent circumstances as where a warrant could not be obtained because of the need for immediate action, was not justified." (App. A-4).

[1972]). In *Mincey v. Arizona*, 437 U.S. 385, 390, 57 L.Ed 2d 290, 298-299, 98 S.Ct. 2408 (1978), the Court held that "it is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment . . . subject only to a few specifically established and well-delineated exceptions.'" (Quoting from *Katz v. U.S.*, 389 U.S. 347, 357, 19 L.Ed 2d 576, 585, 88 S.Ct. 507 [1967]). See, also, *Payton v. New York*, 445 U.S. 573, 587, 63 L.Ed 2d 639, 651, 100 S.Ct. 1371, n. 25 (1980) (warrantless home entry is prohibited by FOURTH AMENDMENT absent a showing of exigent circumstances).

The burden of showing the existence of one of the recognized exigent circumstances rests with the government since it is the party seeking the exemption from the warrant requirement. See *United States v. Jeffers*, 342 U.S. 48, 51, 96 L.Ed 59, 64, 72 S.Ct. 93 (1951). Because the government contended and the district court found that the local police officials lacked probable cause to obtain a warrant, the question is to what extent the exigent circumstances doctrine extends to alleged emergency conditions when no warrant whatsoever is justified. Sox contends that the search in this instance extended beyond the permissible bounds set out in the Supreme Court cases of *Michigan v. Tyler*, 436 U.S. 499, 56 L.Ed 2d 486, 98 S.Ct. 1942 (1978), and *Cady v. Dombrowski*, 413 U.S. 433, 37 L.Ed 2d 706, 93 S.Ct. 2523 (1973).

In *Michigan v. Tyler*, *supra*, the Court held that a burning building constituted an exigency sufficient to justify a warrantless entry by firemen as "reasonable," in order to extinguish the blaze. The Court also noted that the firemen could remain in the building without a warrant for a reasonable time after extinguishing the fire to investigate its cause. The case involved the closer question of re-entry of the premises without a warrant a few hours after extinguishing the fire. However, the

principle that the initial warrantless entry was justified to extinguish a fire was established in that case.

In *Cady v. Dombrowski*, *supra*, five Justices concluded that the warrantless entry into an automobile was justified upon the grounds that the public "might be endangered if an intruder removed a revolver from the trunk of the vehicle." 413 U.S. at 447, 37 L.Ed 2d at 718. The automobile had been disabled in an accident, and the police caused it to be towed to a private garage because it created a nuisance on the highway. 413 U.S. at 443, 37 L.Ed 2d at 715. The sole reason for the initial intrusion into the vehicle had been to search for and remove a revolver. (Per Justice Brennan, dissenting, 413 U.S. at 452, 37 L.Ed 2d at 721.) However, the *Cady* majority decided the case upon the significant differences between mobile vehicles and houses. At 413 U.S. 442, 37 L.Ed 2d 715, the Court stated:

"The constitutional difference between searches of and seizures from houses and similar structures and from vehicles stems both from the ambulatory character of the latter and from the fact that extensive, and often noncriminal contact with automobiles will bring local officials in 'plain view' of evidence . . . ."

Both *Michigan v. Tyler*, *supra*, and *Cady v. Dombrowski*, *supra*, are distinguishable from the instant case. The Sox residence had been secured and locked. The trial court considered whether someone might come on the premises, either legally or illegally, and be injured by the booby traps. It is interesting to note that one of the police officials who participated in the search of Sox's residence was aware of the booby traps on the property prior to this instance. Yet the police officials determined that the alleged emergency required an immediate warrantless entry in spite of the fact that the Sox residence was secured and locked. *Michigan v. Tyler* can be distinguished from the instant case because the original entry into the premises was to control a fire, which ostensibly would have

destroyed the building unless it was entered. In the instant case, the officers could have remained outside for days and no further injury or damage whatsoever would have been sustained. *Cady* can be distinguished simply because it involved the search of a motor vehicle and not a home. It is submitted that *Michigan v. Tyler* and *Cady v. Dombrowski* were not intended to be applied so broadly as they were by the district court in this case.

The district court also relied upon two cases decided by the United States Court of Appeals for the Ninth Circuit. The first such case was *United States v. Martin*, 781 F.2d 671 (9th Cir. 1985). There, police learned of an explosion in an apartment complex, and observed and smelled smoke in the apartment in which the explosion had allegedly occurred. The officers were concerned that persons might be in the apartment in need of assistance, and that further explosions might occur which would endanger other areas in the apartment complex. That case is distinguishable from the instant case because there is no indication here that the deputies thought that other persons were presently in the Sox residence who were in need of any assistance, the residence had been secured to prevent the entry of other persons, and the residence was located in a rural area. Further, any additional discharge of the traps would have required triggering them, an event which was not likely to occur.

The second Ninth Circuit case relied upon by the district court is *United States v. Mayes*, 670 F.2d 126 (9th Cir. 1982). In that case, a child had stopped breathing when tissue paper had been lodged in her throat. At the hospital, the attending physician dispatched a corpsman to the child's apartment to retrieve the tissue paper in order to determine what treatment should be administered to the child. The court held that the warrantless entry had been justified to adequately deal with a life-threatening emergency. *Mayes* is also distinguishable from the present case. There is no indication here that

the deputies sought entry into the Sox residence to retrieve anything to assist in the emergency treatment of Dr. Sox or anyone else.

Both of the above cases involve situations where the police officers were responding to presently existing emergency situations. The emergency situation in the instant case, *i.e.*, the threat to an occupant, ended with Dr. Sox's own injury and departure.

It is submitted that this is a case which requires careful consideration of just what "exigent circumstances" justify the warrantless entry of a person's home. If police are allowed to engage in a warrantless entry of a rural residence to remove items they perceive might endanger a person, a broad extension of the exigent circumstance doctrine is born. Such a principle could be used to justify warrantless entries into homes to remove or eliminate numerous items which might be perceived as dangerous. For example it could be argued that warrantless entry was justified to search for or remove chemical compounds used for rat or insect control, animals thought to be dangerous, hunting rifles, ammunition, animal traps, stored explosives, narcotics, alcohol, or a variety of other things.

Sox contends that the district court in upholding the warrantless search has extended "exigent circumstances" justifying a warrantless entry beyond the existing Supreme Court precedent and the rulings of other Circuits in similar cases.

The United States Court of Appeals for the District of Columbia Circuit addressed the issue of "exigent circumstances" in *U.S. v. Martin*, 562 F.2d 673 (D.C. Cir. 1977). In *Martin*, police officers received an anonymous tip that a machine gun had been shipped from Cleveland to Washington, D.C., where it was to be used in the planned escape of an accused bank robber. After police officers identified a suitcase which they determined probably contained a rifle, they proceeded to search the suit-

case without a warrant. The police then put the gun back in the suitcase and waited for a suspect to pick it up. The government argued that because the item being sought was dangerous contraband, no search warrant was required. The Court held that there were "no 'exigent circumstances' present that justified the agents' failure to obtain a search warrant." 562 F.2d at 680. The Court specifically noted that even though the machine gun was an inherently dangerous object, that the danger was offset by the fact that the agents had the area secured and that they chose to leave the gun in the suitcase.

The circumstances in *Martin* are analogous here, because the Sox home and premises were secured by law enforcement officers and, in addition, the house was locked. The security obviated any necessity for a warrantless entry. See *United States v. Houle*, 603 F.2d 1297 (8th Cir. 1979); *United States v. Pacheco-Ruiz*, 549 F.2d 1204 (9th Cir. 1976).

### CONCLUSION

The Petitioner submits that the writ of certiorari should be granted and that upon a final determination of this cause, the conviction of the Petitioner in the United States District Court for the Middle District of Alabama should be reversed upon the grounds that the evidence secured in the warrantless search was inadmissible.

For the reasons set forth hereinabove, Petitioner respectfully requests this Court to grant his petition for writ of certiorari in order that the issues may be fully briefed and a decision in favor of the Petitioner ultimately reached.

The rationale of the prior decisions of this Court, as well as decisions of the United States Court of Appeals for the Ninth Circuit and the Court of Appeals for the District of Columbia, are inconsistent with the Eleventh Circuit's decision. Thus, certiorari is appropriate in this case under Rule 17.1(a) and (c).

This case is of particular significance because it has sanctioned police intrusion into a home without a warrant when no life or property were imminently threatened. In sanctioning such conduct, the lower federal courts have departed from the accepted and usual course of judicial proceedings.

Respectfully submitted,

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April 25, 1988



## **APPENDIX**

# APPENDIX

## APPENDIX TABLE OF CONTENTS

Page

Order of the District Court of the United States for the Middle District of Alabama, Northern Division.....	A-1 - A-6
Order of the District Court of the United States for the Middle District of Alabama, Northern Division.....	A-7
Judgment of the United States Court of Appeals for the Eleventh Circuit .....	A-8
Order of the United States Court of Appeals for the Eleventh Circuit denying Petition for Rehearing and Suggestion of Rehearing In Banc .....	A-9



A-1

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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CR. No. 87-59-N

UNITED STATES OF AMERICA

v.

JOSEPH H. SOX

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[Filed June 9, 1987]

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ORDER

This cause of action—in which the defendant Joseph H. Sox is charged with possession of firearms that either were unregistered, bore no serial numbers, or otherwise failed to comply with federal law, in violation of 26 U.S.C.A. § 5861(d), (f) and (i)—is now before the court on Sox's April 6, 1987, motion to suppress. Based on the law and the evidence presented at the May 15, 1987, hearing, the motion is due to be denied.

I.

On the evening of November 29, 1986, Sox was seriously injured by a gun-shot wound to the chest and was taken by his friend, Hugo Zacchini, to a local hospital. Anticipating that the local police officials would search

## A-2

his property for an armed assailant, Sox urged Zacchini to inform the police not to go onto his property because his home, garage and surrounding property were "booby-trapped." After a series of break-ins on his property, Sox had installed a number of homemade weapons rigged to fire automatically when triggered. He feared that one of the investigating officers might inadvertently trigger a booby-trap.

In response to a radio dispatcher's broadcast of a shooting at Sox's home, various officers of the Covington County Sheriff's Department and the City of Andalusia Police Department arrived at the scene of the shooting in the hour following Sox's injury. Based on what Zacchini had said to the police, the first two officers to arrive at the scene were under the impression that only Sox's home was booby-trapped; they therefore proceeded to search only the grounds around the residence for an armed assailant. While conducting the search, one of the officers became entangled in fishing wires which Sox had placed across one area of his property. The officer believed that he had stumbled across a booby trap and retreated to await the arrival of other officers.

Chief Deputy Shaw, the officer in command on the evening of November 29, and Zacchini arrived on the scene shortly after the first two officers. The officers informed Shaw about the fishing wires in the yard which they suspected were attached to a booby-trap. Zacchini again warned the officers that Sox's home, garage and surrounding property were rigged with booby-traps. Shaw decided to conduct his own cursory investigation. As he approached Sox's garage, he saw fishing wires that were apparently connected to something inside of the garage. On one of the outside walls of the garage, Shaw detected what he believed to be a booby-trap aimed through a drilled opening.

Based upon his own investigation and the information provided by Zacchini and the two officers first arriving

### A-3

at the Sox residence, Chief Deputy Shaw determined that an emergency situation existed and that the booby-traps on Sox's property had to be found and de-activated immediately. From his observations, Shaw thought there was a substantial possibility that Sox might have been injured by one of his own traps. Shaw was concerned that anyone innocently on the property might be injured or killed. And, given that a number of burglaries had occurred at the Sox residence, he was also concerned that some individual unlawfully on the Sox property might be injured or killed if the booby-traps were not de-activated. Moreover, in light of Sox's injury, Shaw was concerned that the traps might fire without even being triggered.

Shaw dispatched an officer to the hospital to obtain information from Sox about the location of the booby-traps. Shaw then entered Sox's closed garage with the intent of de-activating the booby-traps that he had concluded were inside of the garage. Once inside, Shaw discovered that there were more booby-traps than he had initially suspected; the booby-traps were complicated and varied in construction, and one booby-trap had recently discharged. Shaw concluded that the expert assistance of the Explosive Ordinance Disposal Unit (EOB) [sic] from a nearby military base would be required to de-activate all of the booby-traps on the Sox property. Shaw also radioed for a paramedic team in case an accident did occur.

EOD conducted a thorough search of Sox's home, garage and surrounding property for the purpose of de-activating all of Sox's booby-traps. Immediately after EOD de-activated the booby-traps, the county police officers photographed and seized the booby-traps from Sox's property. Sox contends that the entry of police officers and EOD officials into his home, garage and the surrounding property and the search and seizure of the booby-traps violated the warrant requirement of the

fourth amendment to the U.S. Constitution. Sox, therefore, seeks to suppress all evidence seized from his property on the evening of November 29, 1986.

## II.

A warrantless entry and search of a private residence by police officers or administrative officials is permissible only within "specifically established and well delineated exceptions" to the fourth amendment warrant requirement. *Thompson v. Louisiana*, 469 U.S. 17, —, 105 S. Ct. 409, 410 (1984). "Exigent circumstances" are one of the exceptions that justify a warrantless entry.

Such exigent circumstances exist where the inevitable delay incident to obtaining a warrant based on probable cause must give way to an urgent need for immediate action. *U.S. v. Burgos*, 720 F.2d 1520, 1525 (11th Cir. 1983). In such circumstances there must therefore be probable cause and the need for immediate entry. Here, the government concedes that, on the evening of November 29, the local police officials lacked probable cause to obtain a warrant; that is, there was no evidence that Sox's residence contained the fruit of a crime. Therefore, since there was no probable cause and since, as a result, the local police could not have obtained a warrant even if they had waited until the next day or later to enter the residence, a warrantless entry based on such exigent circumstances as where a warrant could not be obtained because of the need for immediate action, was not justified.

However, exigent circumstances also justify a warrantless entry where there is a need to "preserve life or avoid serious injury." *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S.Ct. 2408, 2413 (1978), quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir.), cert. denied, 375 U.S. 860, 84 S.Ct. 125 (1963). Such entry need not be based on a conclusion that there is probable cause

of a crime or the fruits of a crime. See, e.g., *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 1950 (1978) (a burning building “presents an exigency of sufficient proportions to render a warrantless entry ‘reasonable’ . . . . And once in a building for this purpose, fire-fighters may seize evidence of arson that is in plain view.”); *United States v. Martin*, 781 F.2d 671, 674-75 (9th Cir. 1985) (explosion in an apartment justified warrantless entry and search by police officers); *United States v. Mayes*, 670 F.2d 126 (9th Cir. 1982) (the urgent need to discover the object that had injured a child justified a warrantless entry and search); *Long v. State*, 310 So.2d 35 (Fla. Dist. Ct. App. 1975) (the urgent need to discover the type of drug ingested by a child justified a warrantless entry and search); cf. *Cady v. Dombrowski*, 413, U.S. 433, 447, 93 S.Ct. 2523, 2530-31 (1973) (where police officers believed that a vehicle left on side of road contained [a] gun, “concern for the safety of the general public who might be endangered if an intruder removed . . . revolver from the trunk of the vehicle” justified search of vehicle).

The court is convinced that, under the facts of this case, it was reasonable for the police officers to conclude that the booby-traps in Sox’s home, garage and surrounding property posed an imminent, life threatening danger to the public. A warrantless entry by the police officers and EOD officials to disarm the booby-traps was therefore necessary and proper. Indeed, for the officers to have done otherwise—that is, to have walked away from the house, leaving behind booby-traps which they knew could seriously injure and even kill any unsuspecting persons, whether on the property legally or illegally—would have been an unconscionable act.

Sox contends that the exigent circumstances doctrine should not be applicable in this case because two of the Covington County Deputy Sheriffs knew of the booby-traps prior to the night of November 29. Sox states that

he had in fact hired one of the deputy sheriffs on a part-time basis to patrol the Sox residence and the surrounding property for intruders. Sox's statement is, however, not totally dispositive of whether an emergency situation existed. First, there is no evidence that Chief Deputy Shaw, the officer directing the entry and search, knew about Sox's booby-traps prior to the night of November 29. Second, even if the Sheriff's Department had prior knowledge that Sox had some kind of booby-trap devices on his property, the imminent and substantial danger posed by the traps was not brought home and made real until Sox was shot, possibly by a trap that fired without being triggered. Moreover, prior knowledge that the booby-traps were dangerous does not convince the court that the booby-traps did not still pose clear and imminent danger on the evening of November 29.

Sox also contends that the state officials entered his residences for the purpose of looking for illegal drugs and other illegal items; he maintains that the stated reason of disarming the booby-traps was merely a pretext. The court disagrees. The court is convinced that the officers entered the residence for the purpose of disarming the booby-traps. Admittedly, there was evidence that the officers looked through some of Sox's personal papers; but, if they had found and attempted to use anything, not in plain view, from their search of Sox's papers, such items would be suppressible as beyond the scope of their entry to disarm the booby-traps.

Accordingly, it is ORDERED that defendant Joseph H. Sox's April 6, 1987, motion to suppress be and it is hereby denied.

DONE, this the 9th day of June, 1987.

/s/ Myron H. Thompson  
United States District Judge

A-7

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

---

CR. No. 87-59-N

UNITED STATES OF AMERICA

v.

JOSEPH H. SOX

---

ORDER

For good cause shown, it is ORDERED that the "Judgment and Probation/Commitment Order" entered July 10, 1987, is amended to reflect that defendant Joseph H. Sox's plea of guilty is a conditional plea entered pursuant to Fed.R.Crim.P. 11(a)(2), reserving the right, on appeal from the judgment, to review of the June 9, 1987, order of this court denying defendant Sox's motion to suppress.

DONE, this the 14th day of July, 1987.

/s/ Myron H. Thompson  
United States District Judge

A-8

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 87-7447

Non-Argument Calendar

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D.C. Docket No. 87-59

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*  
v.

JOSEPH H. SOX,  
*Defendant-Appellant.*

---

Appeal from the United States District Court  
for the Middle District of Alabama

---

(December 9, 1987)

---

Before KRAVITCH, JOHNSON and HATCHETT, Cir-  
cuit Judges.

PER CURIAM:

AFFIRMED. See 11th Cir. R. 36-1.

Judgment Entered: December 9, 1987

For the Court: Miguel J. Cortez, Clerk

By: /s/ Karleen McNabb  
Deputy Clerk

Issued as Mandate: Mar. 14, 1988

A-9

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 87-7447

---

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

JOSEPH H. SOX,  
*Defendant-Appellant.*

---

Appeal from the United States District Court for the  
Middle District of Alabama

---

ON PETITION(S) FOR REHEARING AND  
SUGGESTION(S) OF REHEARING IN BANC

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(Opinion December 9, 1987, 11 Cir., 198—, — F.2d —).  
(February 24, 1988)

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Before KRAVITCH, JOHNSON and HATCHETT, Cir-  
cuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are DENIED.

Entered for the Court:

/s/ Joseph W. Hatchett  
United States Circuit Judge

2  
No. 87-1755

Supreme Court  
FILED

JUL 18 1988

JOSEPH F. SPANIOLO, JR.  
CLERK

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**In the Supreme Court of the United States**

OCTOBER TERM, 1988

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JOSEPH H. SOX, PETITIONER

v.

UNITED STATES OF AMERICA

---

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

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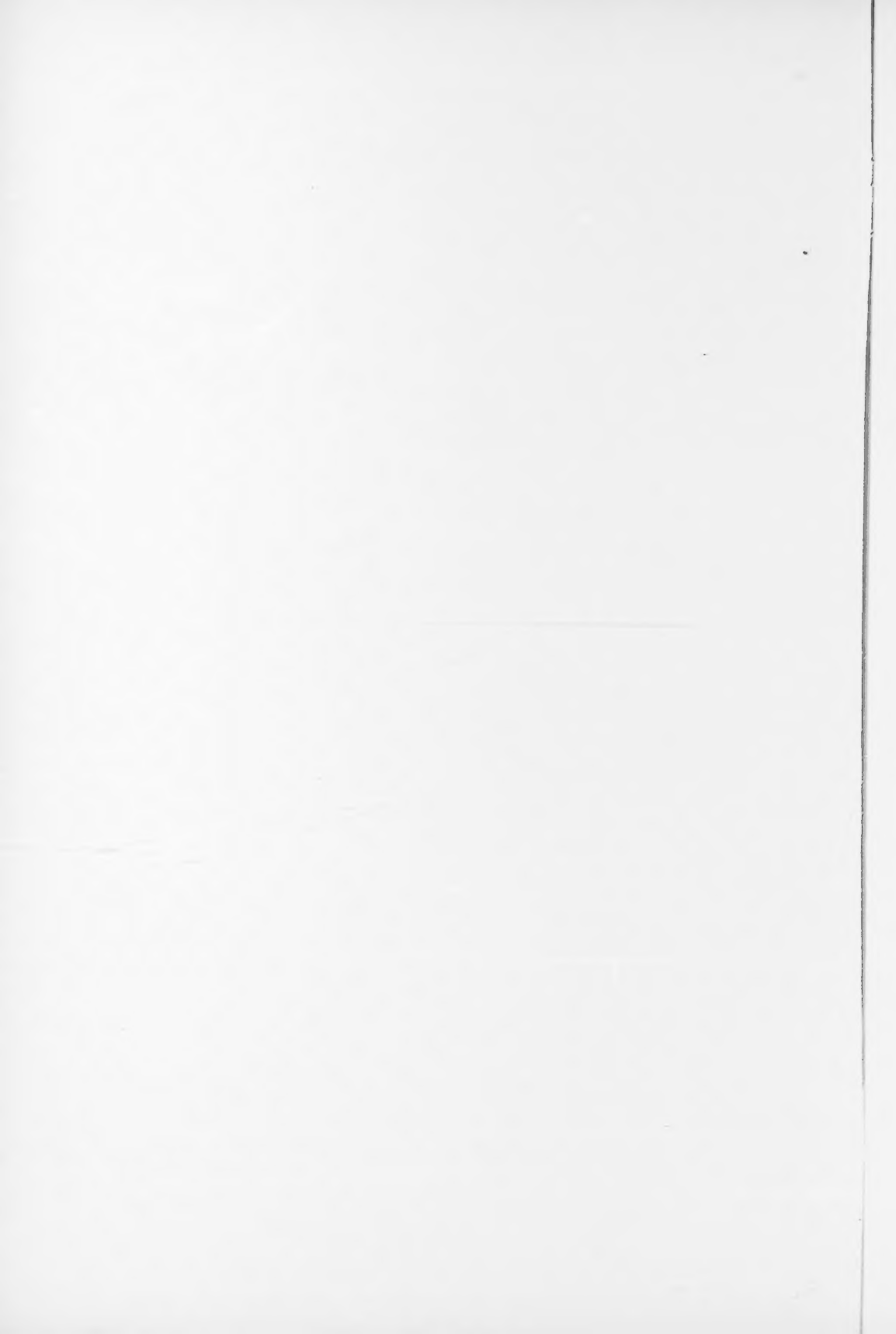
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### **QUESTION PRESENTED**

Whether exigent circumstances justified a warrantless entry into petitioner's home and garage to disarm booby traps in those locations.



## TABLE OF CONTENTS

	Page
Opinions below .....	1
Jurisdiction .....	1
Statement .....	1
Argument .....	4
Conclusion .....	7

## TABLE OF AUTHORITIES

### Cases:

<i>Michigan v. Tyler</i> , 436 U.S. 499 (1978) .....	5
<i>Mincey v. Arizona</i> , 437 U.S. 385 (1978) .....	4
<i>United States v. Martin</i> , 562 F.2d 673 (D.C. Cir. 1977) ...	6

### Statute:

26 U.S.C. 5861(d) .....	2
-------------------------	---



# **In the Supreme Court of the United States**

OCTOBER TERM, 1988

---

No. 87-1755

JOSEPH H. SOX, PETITIONER

v.

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT*

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

## **OPINIONS BELOW**

The judgment order of the court of appeals (Pet. App. A8) is unreported. The opinion of the district court (Pet. App. A1-A6) is likewise unreported.

## **JURISDICTION**

The judgment of the court of appeals was entered on December 9, 1987. A petition for rehearing was denied on February 24, 1988 (Pet. App. A9). The petition for a writ of certiorari was filed on April 25, 1988 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

Following a conditional plea of guilty, petitioner was convicted in the United States District Court for the Middle District of Alabama on one count of possessing an

unregistered firearm, in violation of 26 U.S.C. 5861(d). He was sentenced to a three-year term of imprisonment, which was suspended in favor of three years' probation, and he was fined \$5,000. The court of appeals affirmed in an unpublished judgment order (Pet. App. A8).

1. After suffering a series of burglaries on his property, petitioner installed a number of homemade weapons in his home, in his garage, and on the surrounding property. Those weapons were set up to discharge automatically when triggered. Pet. App. A2.

On November 29, 1986, petitioner was seriously injured on his property by a gunshot wound to the chest. His friend, Hugo Zacchini, took him to a nearby hospital. Anticipating that the local police would search his property for an armed assailant upon learning of his injury, petitioner instructed Zacchini to request that the police not enter his property, due to the presence of the booby traps on that property. Pet. App. A1-A2.

In response to a radio dispatcher's broadcast of a shooting at petitioner's home, officers of the local sheriff's office and police department arrived at the scene of the shooting. Based on what Zacchini had told the police, the first two officers to arrive at the scene concluded that only petitioner's home was booby trapped. Accordingly, in attempting to locate an armed assailant, they searched only on the grounds around the residence. While conducting the search, one of the officers became entangled in fishing wires that petitioner had placed across an area of his property. The officer, believing that he had stumbled across a booby trap, retreated to await the arrival of other officers. Pet. App. A2.

Zacchini and Chief Deputy Shaw, the officer in command that evening, arrived on the scene shortly after the first two officers. The officers informed Shaw about the

fishing wires in the yard, which they suspected were attached to a booby trap. Zacchini again warned the officers that petitioner's home, garage, and surrounding property were rigged with traps. Shaw decided to conduct his own brief investigation. As he approached petitioner's garage, he saw fishing wires that appeared to be connected to something inside the garage. On one of the outside walls of the garage, Shaw also observed what he thought was a booby trap aimed through a drilled opening. Pet. App. A2.

Based upon his own investigation, as well as the information provided by Zacchini and the two officers who first arrived at the scene, Shaw determined that an emergency situation existed and that the booby traps on petitioner's property had to be located and deactivated at once. Shaw believed that there was a strong possibility that petitioner had been shot by one of his own traps. Shaw was concerned that anyone innocently on the property might be injured or killed. And since a number of burglaries had occurred at petitioner's residence, he was also concerned that someone unlawfully entering the property might be injured or killed if the weapons were not deactivated. Pet. App. A2-A3.

Shaw sent an officer to the hospital to obtain information from petitioner about the location of the booby traps. He then entered petitioner's closed garage for the purpose of deactivating the weapons that he believed were inside the garage. Once inside, Shaw discovered more weapons than he had initially suspected; the weapons were complicated and varied in construction, and one had recently discharged. Shaw concluded that the expert assistance of the Explosive Ordnance Disposal Unit (EOD), located at a nearby military base, would be required to deactivate the

booby traps. Shaw also radioed for a paramedic team in the event an accident occurred. Pet. App. A3.

Members of the EOD arrived, conducted a thorough search of petitioner's property, and deactivated the booby traps. Immediately after the EOD deactivated the traps, county police officers photographed them and removed them from petitioner's property. Pet. App. A3.

2. After being indicted on 15 felony counts related to his possession of the booby traps, petitioner filed a motion to suppress the traps. He contended that the police and weapons experts violated the Fourth Amendment by entering his property without a warrant to deactivate and seize the weapons. The district court denied petitioner's suppression motion. The court premised its decision on the proposition that "exigent circumstances \* \* \* justify a warrantless entry where there is a need to 'preserve life or avoid serious injury' " (Pet. App. A4 (quoting *Mincey v. Arizona*, 437 U.S. 385, 392 (1978))). The warrantless entry was justified in petitioner's case, the court found, because "it was reasonable for the police officers to conclude that the booby-traps in [petitioner's] home, garage and surrounding property posed an imminent, life threatening danger to the public" (Pet. App. A5). The court further stated that it would have been "[u]nconscionable" for the police "to have done otherwise—that is, to have walked away from the house, leaving behind booby-traps which they knew could seriously injure and even kill any unsuspecting persons" (*ibid.*). The court of appeals affirmed in an unpublished order (Pet. App. A8).

#### ARGUMENT

Petitioner contends (Pet. 7-12) that the district court erred by concluding that exigent circumstances justified a

warrantless entry onto his property to disarm a series of booby traps. In fact, however, the district court's decision is a straightforward application of the "exigent circumstances" doctrine. Review by this Court is therefore not warranted.

1. This Court has long "recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509 (1978). In *Tyler*, the Court upheld the warrantless entry by firefighters into a burning building, as well as their subsequent seizure of evidence of suspected arson once they were lawfully on the premises. The Court concluded (*ibid.*) that "[a] burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'" As the Court explained, "it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze. And once in a building for this purpose, firefighters may seize evidence of arson that is in plain view."

In the present case, it was likewise entirely reasonable for the police to disarm the numerous booby traps scattered about petitioner's property. The police were legitimately on petitioner's premises to investigate the cause of a serious gunshot wound to petitioner. One of the first officers to arrive, unaware that petitioner had rigged firearms outside his house, risked his life when he accidentally tripped over booby trap wires that petitioner had placed on the surrounding land. A second officer, who arrived moments later, discovered from a cursory investigation that petitioner may well have been injured by one of his own traps, leading the officer to suspect that the traps could fire even without being triggered. Under those cir-

cumstances, the police were clearly entitled to disarm petitioner's booby traps, without delay, to avoid endangering themselves (or others who may have been on the premises) while they completed their investigation into petitioner's shooting. And, having entered petitioner's house and garage for that purpose, the police likewise were entitled to seize petitioner's homemade weapons, which were evidence of a crime in plain view. See *Michigan v. Tyler*, 436 U.S. at 509.

Petitioner argues that *Tyler* is distinguishable because the police "could have remained outside [his house and garage] for days and no further injury \* \* \* would have been sustained" (Pet. 10). The police, however, were under no duty to suspend their investigation into the cause of petitioner's shooting. Nor would it have been appropriate to suspend their investigation in view of the very real threat that one or more of the weapons might have fired without being triggered, as well as the possibility that an intruder or passer-by would be injured by one of the weapons before they could be disarmed.

2. Contrary to petitioner's contention (Pet. 11-12), the decision below does not conflict with *United States v. Martin*, 562 F.2d 673 (D.C. Cir. 1977). In *Martin*, agents of the Bureau of Alcohol, Tobacco, and Firearms opened a suitcase at a Greyhound Bus terminal without first obtaining a warrant because they believed that they would find a machine gun in the suitcase. In reversing the defendant's firearms convictions, the court of appeals held that "the agents \* \* \* had ample opportunity to secure a warrant \* \* \*. Four agents were present in the Greyhound terminal \* \* \* [and] one of [them] could clearly have gone to get a warrant, while the other three maintained the surveillance of the baggage area" (*id.* at 677). The booby traps involved in this case posed a more immediate threat

to the public than the machine gun thought to be concealed in the unaccompanied suitcase. The police could not simply stand by to await the issuance of a search warrant, thereby postponing their investigation of petitioner's shooting and running the risk that a booby trapped weapon would fire spontaneously (or be set off by a squirrel or other animal). Nor could they depart from the scene altogether while awaiting a warrant, thereby risking the possibility that someone on the premises might stumble upon a booby trapped weapon. Accordingly, the decision in this case does not conflict with the decision in *Martin*.

#### CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

CHARLES FRIED  
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JULY 1988